UNITED STATES PATENT AND TRADEMARK OFFICE

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| EXAMINER |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* BENNETT COOKSON JR., KEN BOYER, JAMES MARK
HAMILTON, KENDALL J. JEFFERSON, DAREN THAYNE, and
MICHAEL J. WOLFGRAMM

———————

Appeal 2009-006107
Application 10/748,442
Technology Center 2100

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Before LANCE LEONARD BARRY, ELENI MANTIS MERCADER, and
CARL WHITEHEAD, JR., *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*


DECISION ON APPEAL

## STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-19. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

## INVENTION

The Appellants describe the invention at issue on appeal as follows.

A method of creating a family tree includes receiving a request from a user to return a file that includes the family tree and using a plurality of primary source records to construct the family tree based on the request. The records indicate multiple alternatives for at least one branch of the family tree. The method also includes sending a file that includes the family tree to the user. The file includes the alternatives.

(Abstract.)

## ILLUSTRATIVE CLAIM

1. A method of creating a family tree, comprising:

receiving a request from a user to return a file comprising the family tree;

using a plurality of primary source records to construct the family tree based on the request, wherein the records indicate multiple alternatives for at least one person of the family tree, and wherein the records comprise correlated records having been subjected to one of an individual correlation process and a relationship correlation process to thereby determine a likelihood that two or more of the records represent the at least one person;

sending a file comprising the family tree to the user, wherein the file comprises the alternatives.

REJECTIONS

Claims 1, 2, 11 and 12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2005/0114364 A1 ("Tebbs").

Claims 3-10 and 13-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tebbs and U.S. Patent Publication No. 2004/ 0083226 A1 ("Eaton").

ISSUE

The issue before us is whether the Examiner erred in finding that Tebbs subjects records to an individual correlation process or a relationship correlation process to thereby determine a likelihood that two or more of the records represent the same datum, as required by independent claims 1 and 11.

FINDINGS OF FACT

Tebbs describes its invention as follows. "Apparatuses and methods are described "to quantify the quality of genealogical data. Such quantification is expressed in a rating applied to the genealogical data." (¶ 0025.)

ANALYSIS

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed.

Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist &
Derrick Co.,* 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, the Examiner makes the following findings about Tess.

> [A]s shown in Figure 6, the source type plays a big role in
> determining likelihood that the record does describe a particular
> individual. Furthermore, as recited in paragraph [0054], the
> rating (i.e. likelihood) is determined in order to properly
> identify a person, or confirm that records truly describe certain
> individual or in other words determining link-rating.
> Consequently, the Examiner maintains that Tebbs indeed
> teaches determining likelihood that two or more of the records
> represent the at least one person.

(Ans. 7.)

We agree, however, with the Appellants' following argument.

> Tebbs rates the quality of data elements within an individual
> record with the intent of indicating "the certainty of the claim
> for the previous existence of the individual in light of the
> genealogical data elements" (see ¶[004I]). Rating data elements
> within an individual record to thereby assess the likelihood that
> the individual existed is not the same as determining the
> likelihood that multiple records represent the same person, as
> recited in claim[s] 1 [and 11].

(Reply Br. 2.)

The Examiner does not allege, let alone show, that the addition of

Eaton cures the aforementioned deficiency of Tebbs. Therefore, we

conclude that the Examiner erred in finding that Tebbs subjects records to

an individual correlation process or a relationship correlation process to

thereby determine a likelihood that two or more of the records represent the

same datum, as required by independent claims 1 and 11.

## DECISION

We reverse the rejection of claims 1 and 11 and those of claims 2-10 and 12-19, which depend therefrom.

## REVERSED

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